



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB5596

by Rep. Robert F. Martwick

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1021 new

Amends the Civil Practice Law of the Code of Civil Procedure. Defines "product liability action" and "confidentiality order". Provides that for good cause shown, a party required to respond to discovery in a product liability action may obtain a confidentiality order. Provides that if the court finds that such a confidentiality order is appropriate, the order shall be narrowly drafted and may permit the subsequent designation of specific confidential materials. Provides that, if a party objects to a designation that limits disclosure or dissemination of materials under a confidentiality order, the party seeking to limit disclosure or dissemination pursuant to a claim of confidentiality must demonstrate, by a preponderance of the evidence, a specific, serious, and substantial interest in confidentiality that outweighs the adverse effect of confidentiality upon the general public health or safety. Provides for appeals of orders denying confidentiality. Provides that the new provisions do not: preclude the use of confidentiality orders to protect trade secrets; apply to laws or regulations safeguarding the confidentiality of medical records; or apply to healthcare services. Contains provisions concerning intervention; prohibited agreements; applicability; and other matters.

LRB099 17098 HEP 41456 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding  
5 Section 2-1021 as follows:

6 (735 ILCS 5/2-1021 new)

7 Sec. 2-1021. Product liability; confidentiality orders.

8 (a) As used in this Section, "product liability action"  
9 means a lawsuit for damages for personal injury or wrongful  
10 death caused by an instrumentality, a device, an instrument, a  
11 product, or a condition of an instrumentality, a device, an  
12 instrument, or a product that has caused and is likely to cause  
13 personal injury or death in other members of the public.

14 (b) As used in this Section, "confidentiality order" means  
15 a court order that limits the disclosure or dissemination of  
16 information obtained through discovery in a product liability  
17 action.

18 (c) For good cause shown, a party required to respond to  
19 discovery in a product liability action may obtain a  
20 confidentiality order. If the court finds that such a  
21 confidentiality order is appropriate, the order shall be  
22 narrowly drafted and may permit the subsequent designation of  
23 specific confidential materials. The party requesting the

1 materials shall object with reasonable particularity to any  
2 designation of confidential materials that does not meet the  
3 standard in subsection (d).

4 (d) Upon objection of a party to a designation that limits  
5 disclosure or dissemination of materials under a  
6 confidentiality order, the party seeking to limit disclosure or  
7 dissemination pursuant to a claim of confidentiality must  
8 demonstrate to the court, by a preponderance of the evidence, a  
9 specific, serious, and substantial interest in confidentiality  
10 that outweighs the adverse effect of confidentiality upon the  
11 general public health or safety. The court shall make written  
12 findings in support of its decision to grant or deny  
13 confidentiality. The party seeking a confidentiality order has  
14 the right to appeal an order denying confidentiality, subject  
15 to Supreme Court Rule 307.

16 (e) Nothing in this Section precludes the use of  
17 confidentiality orders to protect trade secrets, consistent  
18 with the standard in subsection (d).

19 (f) No agreement or order resolving or terminating a  
20 product liability action may require any party to keep  
21 confidential any information that is not covered by a  
22 confidentiality order, with the exception of information about  
23 settlement amounts or other benefits provided under a  
24 settlement agreement. Any provision of a settlement agreement  
25 that violates this subsection (f) is severable from the  
26 remainder of the agreement, notwithstanding any provision to

1 the contrary, and the remainder of the agreement shall remain  
2 in force.

3 (g) Nothing in this Section affects the scope of discovery  
4 under applicable court rules or the court's power to supervise  
5 the discovery process.

6 (h) This Section does not apply to or affect laws or  
7 regulations safeguarding the confidentiality of medical  
8 records.

9 (i) This Section does not apply to healthcare services.

10 (j) Any person who satisfies the requirements of Section  
11 2-408 of this Code may intervene in an action for the purpose  
12 of challenging a confidentiality order.

13 (k) No person shall enter into an agreement to resolve a  
14 potential product liability action if that agreement conceals  
15 information that the disclosure of which is necessary to  
16 protect the public health and safety. An agreement is void as  
17 against public policy only upon a final judicial determination  
18 that the agreement violates this subsection (k).

19 (l) This Section applies to all confidentiality orders and  
20 all agreements entered into or executed with respect to product  
21 liability actions on or after the effective date of this  
22 amendatory Act of the 99th General Assembly.